

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

DONALD R. HARPER, JIMMY BOSTIC,  
STACY GAGE, JOEL BROWN, and JERRY  
FREEMAN

Plaintiffs,

vs.

HUGO POLICE DEPARTMENT and  
CHOCTAW COUNTY SHERIFF'S  
DEPARTMENT,

Defendants.

No. CIV-08-385-JHP

**ORDER**

This matter comes before the Court on Defendant Hugo Police Department's FED. R. CIV. P. 12(b)(6) Motion to Dismiss Plaintiffs' Complaint. (Doc. No. 25) Plaintiffs failed to timely respond to the Hugo Police Department's Motion to Dismiss and said Defendant filed a motion to deem its FED. R. CIV. P. 12(b)(6) Motion to Dismiss confessed pursuant to LCvR 7.1(h). (Doc. No. 29) The Plaintiffs thereafter filed a combined response to both Defendants' Motions to Dismiss. (Doc. No. 40) Defendant also filed a Motion to Dismiss Plaintiff's Complaint (Doc. No. 48) due to Plaintiffs continued failure to participate in discovery and abide by the Scheduling Order. Plaintiffs responded (Doc. No. 67), and Defendant filed a Reply (Doc. No. 68). Plaintiffs did not refer to any additional facts beyond those in the Complaint to support their claims.

In order to survive a motion to dismiss for failure to state a claim upon which relief can be granted, factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true even if doubtful in fact. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). Yet the Court need not accept as true legal conclusions from the complaint or “‘naked assertion[s]’ devoid of ‘further factual enhancement.’”

Ashcroft v. Iqbal, \_\_\_\_ U.S. \_\_\_\_, 129 S.Ct. 1937 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. at 557). The Court, being fully advised in the premises, and based upon the reasons as more fully set forth in Defendant Hugo Police Department's Motions to Dismiss Plaintiffs' Complaint (Docs. No. 25, 29 and 48), finds that Plaintiffs have failed to meet this standard and Defendant's Motions to Dismiss are GRANTED.

**IT IS SO ORDERED** this 28th day of July, 2009.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma